

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the West Lugo-Mira Loma Transmission Right of Way to Bernard R. Critchfield, Sr. and Arlene B. Critchfield.

Application 02-04-047
(Filed April 26, 2002)

OPINION AUTHORIZING PROPERTY LEASE**Summary**

Southern California Edison Company (SCE) is authorized to lease to Bernard R. Critchfield, Sr. and Arleen¹ B. Critchfield (jointly, Critchfield) a six acre site on SCE's West Lugo-Mira Loma transmission right of way in the City of Rancho Cucamonga.

Background

SCE seeks Commission authorization under Pub. Util. Code Section 851 to lease to Critchfield a six acre site located on a portion of SCE's West Lugo-Mira Loma transmission right of way in the City of Rancho Cucamonga. The right of way is part of SCE's West Lugo-Mira Loma 500-kilovolt system and includes Commission-jurisdictional facilities.

¹ Spelled "Arlene B. Critchfield" throughout the Application and "Arleen B. Critchfield" in the attached documents, including the signature.

Critchfield, a developer and operator of self-storage and recreational vehicle storage facilities in Southern California, intends to construct and operate such facilities on SCE's right of way. SCE would continue to own and operate its transmission and distribution facilities and would retain unobstructed access to the site. Lease revenues would be shared with SCE's ratepayers as described in the Revenue Treatment section below.

On August 14, 2001, SCE and Critchfield executed an option agreement fully defining the terms of the proposed lease and giving Critchfield 30 days after the Commission's approval to either accept or reject the lease together with any conditions the Commission may impose.

Lease Terms

The initial term of the lease is 30 years commencing on the date Critchfield exercises the option, and Critchfield may renew it for up to one additional 20-year term. The base rent is \$36,000 for the first and second years, \$50,400 for the third year, \$72,000 for the fourth year, and thereafter escalates at 3% compounded annually through year 20 (\$115,539). The base rent is to be adjusted to fair rental value of the property after year 20, upon exercise of the renewal option at the end of year 30, and upon expiration of the tenth year of the renewal; provided that the base rent may not decrease as a result of the adjustment, nor may the adjusted base rent be greater than the base rent otherwise payable immediately prior to the adjustment increased by 2.5% per year compounded annually for ten years.

SCE is to pay all real property taxes assessed against the property by the State Board of Equalization, and Critchfield is to pay all personal property taxes, general and special assessments, and other charges assessed against the property

and improvements, other than those assessed against SCE-owned equipment or improvements.

Terms of the lease provide that Critchfield's use must be consistent with SCE's use for its power lines and equipment, and SCE retains the right to access and use the site as necessary to operate and service its equipment and comply with Commission orders and requirements. Critchfield may not allow any hazardous substances on the site, and must maintain minimum specified vertical and horizontal clearances from SCE's towers, poles, pole anchors, and overhead conductors. Critchfield is required to maintain workers' compensation and insurance of various types at specified levels for itself and its contractors and subcontractors, and to defend and indemnify SCE against all liability and damage claims except those caused by SCE's own negligence or willful misconduct. Critchfield may obtain any permits or zoning changes that may be required for its initial intended use of the property, and SCE retains the right to approve Critchfield's construction and improvements. SCE retains the right to enter the property for purposes of protecting, operating, maintaining, or reconstructing its facilities; the right to condemnation of all or part of the leasehold through its exercise of eminent domain should that become necessary; and additional rights in case of emergencies.

Determination of Best Secondary Use

The primary use of the site is for aboveground transmission and subtransmission lines to deliver electricity to locations in and around the City of Rancho Cucamonga. SCE's aboveground lines crossing the site, and their associated restrictions and height clearances, limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability

obligations, and that it has determined that a self-storage and recreational vehicle storage facility offers that highest potential revenue. To evaluate the rental value of this particular site, SCE analyzed the rent paid for comparable self-storage and recreational vehicle storage facilities in Southern California as a function of the effective gross income of those facilities. SCE believes that the base rent it will receive falls within the acceptable market range established by its analysis, and is in line with revenues it receives in other Commission-approved lease transactions.

Lessee Selection

SCE states that it selected Critchfield as the developer because of the site's proposed use and the background and financial position of Bernard R. Critchfield, Sr. According to SCE, Critchfield, Sr. is the President of Critchfield Development Corporation and a well-established commercial real estate professional with over 30 years of property development and management experience. Critchfield, Sr. is a licensed general contractor in California. He currently manages a self-storage facility, and has developed and constructed another self-storage facility and several condominium and apartment complexes, all in Southern California.

CEQA Considerations

The California Environmental Quality Act (CEQA, Public Resources Code Sections 21000, et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decisionmakers and the public about the potential, significant environmental effects of proposed activities. This is a discretionary project for the Commission. The City of Rancho Cucamonga, as the public agency with the greatest responsibility for supervising or approving the project as a whole, is the

Lead Agency for the project under CEQA. The Commission is a Responsible Agency and must consider the Lead Agency's environmental documents and findings before acting upon or approving the project.²

On December 17, 2001, the City released a Notice of Intent to Adopt a Mitigated Negative Declaration (MND), and released and posted a Draft MND for public comment with the Clerk of the Board in San Bernardino County. On January 9, 2002, the City held a public hearing at which it received oral and written staff reports, and comments, statements and other evidence presented by members of the public. It then certified the Final MND, adopted the findings of fact, approved the Critchfield project with an effective date of January 22, 2002, issued a conditional use permit, and filed a Notice of Determination with the Clerk of the Board of San Bernardino County in compliance with Public Resources Code Section 21152.

Although the Final MND found that residual impacts were anticipated in air quality, it incorporated resource impact mitigation measures designed to reduce the potential impacts to a less than significant level. We have reviewed the City's environmental documents and find them adequate for our decisionmaking purposes. However, we also note that as part of the City's environmental review process, certain additional surveys and/or consultations were contemplated by the U.S. Fish and Wildlife Service (USFWS) if the project was not developed by August 1, 2002. To verify for our record that any necessary studies and consultations have been performed as USFWS intended,

² CEQA Guidelines, Section 15050(b).

we require SCE to advise the Commission's Energy Division Environmental Unit when those activities occur.

We find that the City adopted reasonable mitigation measures to either eliminate or substantially reduce potential environmental impacts to less than significant levels. With the addition of the USFWS notification requirement described above, we adopt the City's findings for purposes of our approval.

Revenue Treatment

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In Decision (D.) 99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees, or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease here are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the annual threshold are split between shareholders and ratepayers on a 70/30 basis. The lease proposed here is "passive" for sharing purposes.³

³ See Attachment B to SCE's Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* as categories of non-tariffed products and services.

Footnote continued on next page

Discussion

Pub. Util. Code Section 851 provides that no public utility “shall ... lease ... [property] necessary or useful in the performance of its duties to the public ... without first having secured from the [C]ommission an order authorizing it so to do.” The Commission’s role in examining transactions subject to Section 851 is the protection of the public interest.⁴ The Commission has determined that the public interest is served when utility property is used for other productive purposes without interfering with the utility’s operations,⁵ and such is the case here. There is in addition a clear public benefit to be gained here in that the agreement will generate revenues that will be shared between SCE and its ratepayers, thus contributing to lower rates and at the same time enhancing the utility’s financial health and the California economy. As discussed in the CEQA Considerations section above, the proposed use has been reviewed, its environmental impact assessed, and the project approved by the local jurisdiction. The lease agreement provides a host of provisions addressing lessee activities that could potentially impair the site’s primary public utility use; informing the lessee of potential hazards; and reserving SCE’s rights to fully

Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

⁴ Section 853(a): “This article [Article 6, Transfer or Encumbrance of Utility Property, Sections 851 through 856] ... shall apply to any public utility ... if the commission finds ... that the application of this article is required by the public interest.”

⁵ In D.93-04-019, p. 3, we observed: “Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.”

access the site, to use the site for other compatible, productive purposes, and to reclaim the site if necessary. We conclude that the proposed lease is in the public interest and should be approved.

Procedural Considerations

The Commission in Resolution ALJ 176-3088 preliminarily categorized this as a ratesetting proceeding not expected to require hearings. There are no material facts in dispute, and there is no known opposition to granting the relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, the requirement for a 30-day period for public review and comment is waived as permitted by Pub. Util. Code Section 311(g)(2).

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and James C. McVicar is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Under terms of the lease, Critchfield's use of the site will not interfere with SCE's operations or facilities on the site.
2. All revenue from the lease in excess of a Commission-established threshold will be treated as OOR and shared 70%/30% between SCE and its ratepayers, pursuant to D.99-09-070.
3. The City of Cucamonga is the Lead Agency for the proposed project under CEQA, and the Commission is a Responsible Agency.
4. The City prepared a Draft MND for the project, which found that the proposed project would have a less than significant effect on the environment.

5. On January 9, 2002, the City certified the Final Negative Declaration, adopted the findings of fact, and approved the project.

6. The Negative Declaration, the Notice of Determination, and the resolution adopted by the City are adequate for the Commission's decisionmaking purposes as a Responsible Agency under CEQA.

7. Consistent with the City's findings and determinations, we find the proposed project will have a less than significant effect on the environment.

8. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. The proposed revenue sharing conforms to the Commission's order in D.99-09-070.

2. As a Responsible Agency under CEQA, the Commission must review and consider the City's Negative Declaration in making its decision.

3. As a condition of our approval, SCE should be required to verify that any necessary studies and consultations have been performed as USFWS contemplated, and to provide the Commission's Energy Division Environmental Unit with USFWS's confirmation to that effect.

4. A public hearing is not necessary.

5. The Application should be granted as set forth in the following order.

6. This order should be made effective immediately to allow the lease to take effect and its benefits to begin flowing to SCE and its ratepayers as soon as possible.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized to lease to Bernard R. Critchfield, Sr. and Arleen B. Critchfield a site on SCE's West Lugo-Mira Loma transmission right of way in City of Rancho Cucamonga, in accordance with the terms and conditions set forth in Application 02-04-047 and this order.
2. SCE shall verify that any necessary studies and consultations have been performed as the U.S. Fish and Wildlife Service contemplated, and shall provide the Commission's Energy Division Environmental Unit with U.S. Fish and Wildlife Service's confirmation of that fact.
3. All revenue from the lease shall be treated as Other Operating Revenue and subject to the sharing mechanism set forth in Decision 99-09-070.
4. We adopt the City's environmental findings and mitigation measures for purposes of our approval.
5. The utility shall ensure that construction activities anticipated to result from our Section 851 approval shall be conducted consistent with any prior environmental mitigation measures adopted by this Commission related to the subject property.
6. SCE shall notify the Director of the Commission's Energy Division in writing of any amendments to, extension of, or termination of the lease agreement, within 30 days after such amendments are executed.
7. Application 02-04-047 is closed.

This order is effective today.

Dated _____, at San Francisco, California.